

# **TOWN OF LAUDERDALE-BY-THE-SEA**

## **PLANNING AND ZONING REGULAR MEETING MINUTES**

*Town Commission Meeting Room*

*Wednesday, June 16, 2010*

*6:30 P.M.*

### **I. CALL TO ORDER**

Town Attorney Susan Trevarthen called the meeting to order at 6:30 P.M. Members present were Alfred Oldaker, Yann Brandt, George Hunsaker, Ben Freeney, and First Alternate Eric Yankwitt. Also present were, Interim Assistant Town Manager Bud Bentley, and Planning Consultant Walter Keller. Board Secretary Colleen Tyrrell was present to record the minutes of the meeting.

### **II. PLEDGE OF ALLEGIANCE TO THE FLAG**

The Pledge of Allegiance was recited

### **III. ELECTION OF CHAIRMAN AND VICE CHAIRMAN**

( First Alternate Eric Yankwitt arrived after the elections )

Yann Brandt made a motion, seconded by Ben Freeney, to elect Alfred Oldaker as Chairman of the Planning and Zoning Board. In a roll call vote, all voted in favor to elect Mr. Oldaker as the Board Chair. The motion passes 4 – 0.

Chairman Oldaker asked for a motion to elect the Vice Chair of the Planning and Zoning Board.

Ben Freeney made a motion, seconded by George Hunsaker, to elect Yann Brandt as the Vice Chair of the Planning and Zoning Board. In a roll call vote, all voted in favor to elect Yann Brandt as the Vice Chair. The motion passes 4 – 0.

### **IV. APPROVAL OF MINUTES**

Regular Meeting of the Planning and Zoning Board – December 16, 2009

The minutes were approved as presented.

### **V. NEW BUSINESS**

**Request:** (A) The Planning and Zoning Board to provide recommendations to the Town Commission to the proposed amendments to the Towns' Code of Ordinances and the Towns' Comprehensive Plan.

- Item #1:** Amendments to the Towns' Comprehensive Plan to include revisions to address the Broward County Planning Council's Provisional Certification of the Future Land use Element, the new Public School Facility Element. ( Walter Keller )
- Item #2:** Code Amendments to 30-313 (29) General Provisions to allow swimming pools in the front setbacks. ( Jeff Bowman )
- Item #3:** Code Amendments to 6-42 regarding maintenance of sites under development. (JB)
- Item #4:** New Code Section 11-21 to address foreclosed and/or abandoned properties. (JB)
- Item #5:** Code Amendments to 12-10 to allow businesses throughout Town to extend business hours to provide a greater service and convenience to residents and visitors. (JB)

On behalf of Staff, Town Attorney Susan Trevarthen requested that Item #1 be considered last and that the board first address Items 2 through 5. Attorney Trevarthen said that Staff felt that the board would be able to move through the smaller items first.

Chairman Oldaker agreed that Item #1 would be reviewed last.

With the Chair's approval, Attorney Trevarthen directed the board to Item #2 listed on the agenda. Attorney Trevarthen said that the Ordinance was drafted with the direction of the Town Commission and the Town Attorney then read the Ordinance title. Attorney Trevarthen noted that the board was provided version 1 and version 2 of the same Ordinance in their backup material. Version 1 allows pools in the front yards of all lots that are covered by this Ordinance. Version 2 only allows pools in the front yards of corner lots. Attorney Trevarthen said that the Town Commission requested that the two alternatives be brought before the board to be reviewed and provide the commission with a recommendation.

Chairman Oldaker asked the board to comment on version 1 starting with page 2 lines 30 through 64.

Yann Brandt referred to page 2 sub-section c and asked the Interim Assistance Town Manager Bud Bentley for clarification regarding the site triangle.

Mr. Bentley said that the site triangle generally refers to a clear area that would typically be from 3 to 7 feet for a corner lot and that this sub-section addresses corner lots.

Yann Brandt said that if he built a pool, how far from the street would he have to put the required enclosure?

Mr. Bentley said that this matter was something that Staff had noted on the Ordinance to discuss with the board and asked the Attorney Trevarthen for her input.

Attorney Trevarthen said that the 5 foot dimension that was indicated in the Ordinance was recommended by Town Staff and goes back to the original version of this Ordinance. Attorney Trevarthen said that if there is a desire to change the Ordinance it could be done.

Yann Brandt said that he felt that version 1 opens a lot more questions and in his opinion, he felt that version 2 would be more applicable to what the Town was trying to achieve.

Mr. Bentley interjected that he would like to respond to the clear-site triangle question. The clear-site triangle requires no obstruction between 30 inches and 8 feet in height and the application of that is any driveway that intersects a public right-of-way. The clear-site triangle example would be where you would have two streets that come together and the clear-site triangle would be on private property for the purpose of maintaining the distance. Mr. Bentley said that since this is in the zoning code, it would apply to private property.

Attorney Trevarthen said that Mr. Bentley was at an disadvantage because his Staff was not able to be at the hearing and that the information requested about the clear-site triangle could be noted for further follow-up by Staff and could be moved forward as part of the board's recommendation if this would be a concern of the board and the exact answer could be supplied prior to it going before the Town Commission.

Mr. Bentley said that before this would go before the Town commission, Staff would provide diagrams so that there would be a visual presentation.

Chairman Oldaker said that he wanted to make sure everyone understood the concept of the front yard. Chairman Oldaker said that it was his understanding that the narrow side of the corner lot would be considered the front yard. But if you take the other lots in Town, the front yard is the traditional front yard. So in version 1, it allowed a pool in any lot with a front yard; but it was the intent to address just the front yards of corner lots that were basically the side yard. Chairman Oldaker confirmed with Attorney Trevarthen that his concept was correct.

Attorney Trevarthen said that version 1 was much broader and version 2 only applies to corner lots.

Board Secretary Colleen Tyrrell announced that First Alternate Eric Yankwitt arrived to the dais. Mr. Yankwitt was informed that Mr. Oldaker was elected as the Chair and Mr. Yann Brandt elected as the Vice Chair by the board and that the board was discussing Item #2.



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Chairman Oldaker referred to line 58 through 60 regarding the height of the fence enclosure and asked if the 5 foot height was required for every pool wherever it is positioned on the property or is it just referring to front yard pools.

Mr. Bentley responded that this is existing language and would apply to all pools and the language is not being changed.

Chairman Oldaker asked the board to comment on page 3 lines 65 through 95.

Ben Freeny referred to line 67 that states "shall not be located less than 2 ½ feet from the lot lines" and asked if that meant the property line?

Attorney Trevarthen said that in version 1 it would be any lot line and in version 2 it would be limited to corner lots.

Since there were no further questions pertaining to version 1, Chairman Oldaker moved on to version 2 for board comments.

Attorney Trevarthen noted the areas in version 2 that were changed to reference only "corner lots". Attorney Trevarthen explained to the board that the Town Commission was seeking the board's recommendation on which version they should consider as to allowing pools in the front yard of all lots or just corner lots and if the board has detail concerns as to the version the board chooses to follow, the Town Commission would consider those comments as well.

George Hunsaker made a motion, seconded by Mr. Brandt, to recommend that Item #2 be forwarded to the Town Commission for approval.

Mr. Brandt wished to discuss the motion further. Mr. Brandt indicated that he still did not have a full understanding of what denotes a corner lot and he also wanted to make sure that the fencing codes were consistent with the language in the Ordinance and, secondly, is the board saying that these corner lots could build a fence in the front yard because they have a pool but someone else that does not have a pool, would not be able to have the same fence.

Attorney Trevarthen responded that there is a law that requires that all pools be enclosed with a fence for safety purposes.

Consultant Walter Keller came forward and stated that there were a couple of facts that complicate this issue. One is that a property owner has the ability to decide what would be the front yard and in some cases the side yard would be better as the front yard. The other issue is that the code did not allow fences in the front yard and he was not sure how this would affect this code. Also, in the old part of Town before annexation took place, the single-family lots were not allowed to put a fence in the front yard.

Mr. Brandt was looking for a unified code and did not think it was fair for someone who did not want to build a pool could not put in a fence without having to pay money and go through the variance process.

Mr. Bentley said that the fence enclosure is required by State law for a bonified health and safety reason and said that there is not a definitive answer on where the fence would go if the option was available to a property owner who wanted to privatize their front yard for recreational purposes whether the front yard would be used for a pool or to put playground equipment. Mr. Bentley said that the existing code requires a screen enclosure or a fence and on page 3 it states that the screen enclosure cannot be located less than 2 ½ feet from the lot lines.

Attorney Trevarthen commented that Mr. Brandt is recommending that the benefit of having a fence in the front yard be extended to those that do not have a pool in the front yard.

Chairman Oldaker asked if the lot lines or property lines would be the dimensions that would be on a survey and if that is the case, how would the 25 foot setback be handled on these side yards.

Mr. Bentley said that he thought Chairman Oldaker's question would apply to the right-of-way that appears to be part of the lot. Mr. Bentley said that a typical street would have a 40 foot right-of-way and there would be 20 feet of payment; so there would be 10 feet of unimproved right-of-way on each side. The property line would start 10 feet back from the paved surface and at that point into the lot would be the part that is privately owned.

Mr. Brandt said that he knew there was a motion on the floor but after further thinking about the changes, he wanted to recommend that this item be deferred to the next scheduled Planning and Zoning meeting so that Staff could provide some drawings and visuals that would reflect the setbacks and just what would be allowed and at that time just consider version 2 of Item #2.

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George Hunsaker withdrew his previous motion and Mr. Brandt withdrew his second to the motion.

Mr. Brandt made a motion, seconded by Ben Freeny, to bring back Item #2 to allow swimming pools in the front setbacks to the next Planning and Zoning Meeting scheduled for July 21, 2010 and that the scope of review would be for version 2 and that Staff provide drawings and visual examples of what the lot lines and setbacks would look like on a site plan. Also, to bring back version 2 to reflect the amended language in line 68 for screen enclosures to only apply to a pool on a corner lot. In a roll call vote, all voted in favor. The motion passes 5 – 0.

Chairman Oldaker requested that the visual presentation be supplied in the agenda packet for the board's review prior to the next scheduled hearing.

Chairman Oldaker asked for Attorney Trevarthen to present Agenda Item #3.

Attorney Trevarthen read the title to Ordinance amending Section 6-42 regarding maintenance of sites under development. This was another Ordinance that was requested to be prepared by the Town Commission and that the Ordinance be brought before the Planning and Zoning Board for its input. Briefly, the Ordinance revises the requirements of how to maintain property that is either subject to demolition or inactive during the construction process or during an extension of the construction process.

Chairman Oldaker asked the board to comment on the first page of Item #3.

Mr. Freeny said that since demolished properties required a permit, he suggested removing the word "approval" from line 30.

Mr. Bentley addressed Mr. Freeny's request to deleting the word "approval" from line 30 and stated that this concept is meant to apply to several different situations. The first would be if you had a project that is approved that includes demolition, the Town wants that demolition to proceed and often on a development site, the use has been abandoned or boarded and this is why this language has been added so that these conditions would not extend for long periods of time. As far as the word "permit", Mr. Bentley interpreted that to mean a demolition permit and again that is stated so that they would proceed in a timely manner.

Chairman Oldaker asked if this was brought before the board because of situations where the Town has had a problem.

Attorney Trevarthen said there were some concerns with the maintenance of certain properties in Town last year and there were some discussions at the Town Commission on particular properties which generated the genesis of the Town Commission recommending that Staff look at this code and strengthen this code in order to protect the neighborhood.

Mr. Bentley asked Attorney Trevarthen if these timelines would apply to existing projects.

Attorney Trevarthen said that number 1 only deals with demolition; number 3 deals with inactive projects and that line 54 on page 2 would be relevant to the facts that Mr. Bentley is suggesting.

Chairman Oldaker asked the board to comment on page 2 lines 33 through 78.

Mr. Brandt referred to the fencing language, and wanted to know what height of fence would be required. Mr. Brandt said that he liked the intent of the language, however, in a residential situation he felt the requirement for a perimeter fence should be changed. Personally, Mr. Brandt did not like the idea of looking at a perimeter fence for 18 months as he is pulling into his driveway everyday. If the construction is progressing, he did not think the perimeter fence should be required. Mr. Brandt would like the board to consider adding language that fencing would become a requirement if a project becomes inactive.

Mr. Brandt then referred lines 60 through 63 that states "Incomplete or unfinished buildings shall be secured as determined by the Town Building Official, or removal if classified by the Town Building Official as an unsafe structure, at the property owner's expense". Mr. Brandt said that often times the property owner is no where to be found or they won't do anything at all and asked if the Town would be doing something about it and then putting that cost back onto the property owner.

In response to Mr. Brandt's comments, Mr. Hunsaker said that he would not be in favor of limiting the requirement of a perimeter fence. The fence provides security and some dust control. Mr. Hunsaker said that an open construction site could be an open play zone after work hours



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for teenagers in the Town. Mr. Hunsaker said that we have to live with the visual impact of the fence to provide the security for the community.

Mr. Brandt did not feel the perimeter fence would stop anyone that really wanted to get into the property and asked Staff to follow up with the Police Chief to see if he thought it was a good security blanket and would help the police force.

Mr. Freeny commented on the fence requirement and felt it was a public safety issue that would apply to any construction site whether commercial or residential.

Mr. Bentley said that in reading this Ordinance, he did not see that the Town was empowered to construct that fence if the owner fails to comply with the requirement. This would be a code violation and it would go to the Special Magistrate and fines would be assessed for the period of non-compliance. Mr. Bentley said that for overgrown properties, the Town has been granted the authority by the Special Magistrate to clean up the property after the property owner has been noticed and then a lien is placed on the property to recover the expense to the Town.

Chairman Oldaker asked what the point of the Ordinance was if the Town was not given the authority to put up a perimeter fence.

Attorney Trevarthen said that the obligation would be there and then there would be enforcement by Code.

Mr. Hunsaker said that the Town was fully protected because the Ordinance states in section 2 that before construction begins, a perimeter fence would have to be in place. So, if construction begins without a perimeter fence, Code would come in and red tag the property and construction would discontinue until the fence is installed.

Mr. Bentley said that the Ordinance also stipulates that if the perimeter fencing causes visual blight or would have a detrimental aesthetic effect on the neighborhood, the fencing shall be removed and the lot cleared, seeded or sodded with grass and then irrigated at the owner's expense.

There being no further discussion, Chairman Oldaker asked for a motion from the board.

Attorney Trevarthen explained how the board could proceed with making recommendations to the Town Commission and how to address concerns that the board would like to see come back for further review.

Mr. Brandt said that he felt that this was an important Ordinance that the commission should consider sooner than later and asked Mr. Bentley if it was possible to make a motion to approve the Ordinance with a few minor changes and also to request that sub-section 2 be stricken regarding the perimeter fencing requirement. Mr. Brandt said he was uncomfortable with placing that requirement on all construction.

Mr. Bentley responded "yes" to Mr. Brandt's question.

Mr. Brandt made a motion to pass the Ordinance on to the Town Commission for consideration with the changes recommended by the board and that new paragraph 2 be stricken that requires perimeter fencing around all construction sites.

Mr. Bentley said that the core section of that language is existing and asked Mr. Brandt if he was referring that only the changes be stricken or is Mr. Brandt suggesting that the Town no longer require perimeter fencing.

Mr. Brandt said that he was looking at the stricken language of the current code and he thought that the intent was for construction that was not commencing immediately and not actually a requirement for all construction projects. Mr. Brandt said he would agree with keeping the original language in paragraph 2.

Attorney Trevarthen said that the motion would be to strike the changes and revert to the original language of the paragraph.

Mr. Bentley said that to revert back to the original language in paragraph 2 would affect part of paragraph 3 and there would have to be some adjustment to the language in paragraph 3 if this motion proceeds.

Attorney Trevarthen said that Staff would take the board's direction and would make sure there would be no inconsistencies in the Ordinance.



Mr. Brandt made a motion, seconded by Ben Freeny, to pass this Ordinance amending Section 6-42 regarding maintenance of sites under development on to the Commission with the recommendation of approval subject to removing the new wording of section 2 and reverting to the prior version of section 2 and would amend other provisions to be consistent with that change that is being considered by the board. In roll call vote, Mr. Hunsaker voted no. The motion passes 4 to 1.

Chairman Oldaker asked for Attorney Trevarthen to present Agenda Item #4.

Attorney Trevarthen read the title to Ordinance amending Chapter 11 of the Code of Ordinances by establishing Article 1 or existing code provisions related to junks, wrecked, stolen or abandoned personal property; further establishing Article II "Abandoned Real Property" to provide for registration, monitoring and upkeep of maintenance of abandoned real property; providing for severability; providing for codification; and providing for an effective date.

Chairman Oldaker moved on to page 3 since there were no questions for pages 1 and 2. Chairman Oldaker began with asking how this Ordinance would be enforced. Chairman Oldaker commented that he is a director on two condominium complexes and he has not been able to find anyone to pay the maintenance. Chairman Oldaker stated that there are almost six thousand foreclosures a month and did not understand how this could be done within the timeframe indicated.

Mr. Bentley said this is an emerging field and the Town would do it with great vigor, professionalism, and dedication to protect the Town's neighborhoods. Mr. Bentley said that there has been pre-emptive legislation to try and standardize some of these regulations to the state and grant the financial institutions much longer periods of time to address these issues. At the same time, there was competing legislation to shorten the time. Mr. Bentley reiterated that the Town would put forth its best efforts to enforce this Ordinance.

Mr. Brandt said this Ordinance was a whole lot of law and would be very difficult to enforce and referred to the section that states **any mortgagee or property owner of record that has registered the property under this article must report any change of information contained in registration within 10 days of the change.** Mr. Brandt said that it takes the bank 9 months before they learn if someone is in default on the mortgage and said that the maintenance requirement in 11-23 is already in the Town codes and the main concern would be the single family homes. Mr. Brandt said that he liked the intent but did not see how it would work.

Mr. Hunsaker said it was his understanding that it was helpful to identify in the code the rules and regulations for abandoned properties and agreed that the entity holding the mortgage might not notify the Town. But if maintenance becomes a problem, then we would refer to the language in this Ordinance as a hammer once it is determined who is now handling the property. If a foreclosed property becomes a maintenance problem, notifying the owner would not accomplish anything and, in the process, Code Enforcement would identify through court records if it was in foreclosure and then there would be an additional hammer for enforcement. Mr. Hunsaker said that the intent of the Ordinance is a good intent in spite of the difficulties of enforcing the Ordinance.

Chairman Oldaker confirmed with Attorney Trevarthen that the end result would be placing a lien on the property.

Attorney Trevarthen addressed some of the comments that were previously made and said that versions of this Ordinance have been adopted by many other South Florida communities and if the board is interested in finding out whether it is effective, the board could instruct Staff to have this item come back to the board with information on the experience of those other communities. Attorney Trevarthen thought that other communities have had an Ordinance of this type in place for at least a year or more. Attorney Trevarthen said that if there is a fine running or if there is a monetary implication associated with it, she felt the bank would pay more attention. This would be something that could be verified by checking with other communities and if that would help the board to come to a decision on whether this would be a good idea for the Town, the board could certainly make that direction.

Mr. Brandt asked Attorney Trevarthen for direction on processing a motion to the Town Commission.

Attorney Trevarthen said that the Planning and Zoning Board is a review and recommend board and would not have the final say on any matters under the Town's code. So the purpose of the Planning and Zoning Board is to provide input from the community and from any personal experience that a board member might have in addressing these situations. This is an Ordinance that the Town Commission wanted to see go forward and the options available to the board are to pass the Ordinance on to the Town Commission with a recommendation for approval or a recommendation for denial and changes could be included with the approval. The final option for the board is to have the Ordinance come back to the board with further information that would allow the board to come to a better conclusion.



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Chairman Oldaker said that the board could recommend that this move forward to the Town Commission but he just did not see how this could work for the Town.

Attorney Trevarthen said that the motion for that would be to make a motion to recommend denial of the Ordinance to the Town Commission. In other words, send the Town Commission a recommendation that this Ordinance not be adopted.

Ben Freeny made a motion, seconded by Eric Yankwitt, that this Ordinance (New Code Section 11-21 to address foreclosed and/or abandoned properties) be continued to the next Planning and Zoning meeting scheduled for July 21, 2010 and that Staff provide information from other cities like Margate, Coral Springs, Hillsboro Beach, and Lighthouse Point to see how this type of Ordinance has operated for them. In a roll call vote, all voted in favor. The motion passes 5 -0.

Chairman Oldaker asked for Attorney Trevarthen to present Agenda Item #5.

Attorney Trevarthen said that Item #5 is an Ordinance amending Chapter 12 called "Licenses", Article I of "Business Taxes", Section 12-10 "Hours of businesses with the city limits restricted"; and further amending Chapter 12 "Licenses" by establishing a new Article II "Extended Hours License" of the Code of Ordinances; providing for application and review procedures; providing for applicable review criteria; providing for revocation, suspension, or imposition of conditions; providing for license renewal; providing for appeal procedures; providing for license transfer; providing for severability, codification, and an effective date.

Attorney Trevarthen said that this is a proposal that emerged some time ago when a property owner in the community came forth and was interested in a 24 hour operation during the winter season. That request resulted in an original Ordinance that was provided in the board's back-up material. This matter was considered on a number of occasions by the Town Commission and ultimately an ordinance was prepared that would not create an automatic right to the ability to operate over night but would rather create a process and a license so that people would have to apply for that right to be open between 2 and 6 A.M. The Ordinance that is before the board lays out the procedure and provides the criteria and conditions that would have to be met and if the conditions are not met, then the license could be revoked.

Mr. Bentley interjected that this Ordinance does not allow the extension for the sale of alcohol, which was covered in another section of the Town's code. Mr. Bentley said that alcohol sales would continue to stop at 2 A.M. Mr. Bentley wanted to make the point that a business that sells alcohol could apply for extended hours for food service or for whatever other type of business they would have, but they would not be able to apply for any extended hours for the sale of alcohol.

The Attorney Trevarthen said that there is a statute on point and the code already deals with the sale and service of alcohol and this issue is not a subject that the board would be considering at this meeting. The board is being asked to look at other kinds of operations between the hours of 2 and 6 A.M.

Mr. Bentley commented that many communities believe this is a self-regulating issue and have not regulated the hours for a typical retail establishment and that is reflected in the original draft of the Ordinance. The secondary draft states that a retail establishment would have to apply and obtain permission for extending their hours of operation.

Mr. Hunsaker said that he did not feel that the board needed to spend a lot of time on this and it was his opinion that there was no real need for this type of Ordinance. Mr. Hunsaker did not think that the community desires an Ordinance to permit businesses to operate before 6 A.M. or after 2 A.M. Mr. Hunsaker said that you should not start this because one business in Town desired to have a pharmacy open during the season and he did not feel that someone would walk to a pharmacy after 2 A.M. Mr. Hunsaker said it was his opinion that the board should move this on to the Town Commission with the recommendation to disapprove.

Mr. Freeny agreed with Mr. Hunsaker's comments and interjected that one argument to allow the Ordinance was to provide a benefit to residents and tourists in Town to allow access to a drug store after hours. Mr. Freeny said that he did know that a couple blocks south on A1A, there was a 24 hour drug store that people would have access to. Mr. Freeny said that he was not in favor of this Ordinance.

Mr. Yankwitt said that it was his understanding that the way this Ordinance was written was to have an application to have a license so that you could operate if you chose between 2 and 6 A.M., and that proposal would go before a governing body to either grant or deny the license request. So this Ordinance would be to establish a procedure in order to approve or disapprove and to give a mechanism to grant that license. So, what would it hurt to have a mechanism to grant for example 101 Ocean's or Aruba's to allow them to operate to 6 A.M in the morning which would attract more visitors into the area and would prosper the businesses that were open that early.



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Mr. Hunsaker said that he understood it was a procedure but in his option the Town did not need this procedure. Mr. Hunsaker said that the drug store in Sea Ranch Lakes was originally open for 24 hours and they very quickly learned there was not sufficient demand even at the height of the season to stay open for a 24 hours, so they scaled back their hours. Mr. Hunsaker said that this example is reason enough for him to conclude that there is not enough demand for establishments to be open between 2 and 6 A.M.

Mr. Yankwitt agreed with Mr. Hunsaker's comment. However, when it's New Year's Eve or if you are celebrating other holidays, or a birthday, he tends to like to stay out all night and party. Mr. Yankwitt said that on those special occasions, the party just starts to get going around 11:00 or 12:00. Mr. Yankwitt said that this Ordinance was not to deny the possibility of staying open later but to grant these businesses the ability to apply for a license for which they could be granted or denied.

Mr. Brandt agreed that this is mostly procedural and referred to page 2 line 55 and suggested that in all cases there should be an application made for the Town and said that maybe the "or" should be an "and". Mr. Brandt was in favor of Ordinance to create a procedure that would state that anyone who applied for a license for extended business hours would have to go before the Town Commission.

Attorney Trevarthen said that she would certainly take that suggestion and said that he was correctly interpreting the Ordinance and said that no individual would have the right to the extended business hours with the passage of this Ordinance; they would only have access to a procedure.

Mr. Brandt made a motion, seconded by Mr. Yankwitt, that this Ordinance regarding Code Amendments to 12-10 to allow businesses throughout Town to extend business hours to provide a greater service and convenience to residents and visitors be sent to the Town Commission for approval. In a roll call vote, George Hunsaker and Ben Freeny voted no. The motion passes 3 – 2.

Chairman Oldaker returned to Item #1 and asked Planning Consultant Walter Keller to present this item.

Planning Consultant Walter Keller began with an introduction and provided a brief overview to help the board understand the role of the Planning and Zoning Board in the Comprehensive Plan and process that is involved.

Mr. Keller said that the Town's plan was first done in 1989 which basically has two parts. The adoption part is primarily the goals, objectives, and policies. The item in the board's backup material shows the strike-throughs and underlining of the proposed revisions to the plan. The second part of the document is called the support document that is not formally adopted so that changes can be made and not have to go through the process. The comprehensive plan that was adopted by the Town in 1989 was the first plan that was mandated by state law. Mr. Keller said that the board should know that Broward County is a home-rule county and said that the Broward County Planning Council (BCPC) has all of the responsibility in the area of future land use which is one of the elements in the document. The BCPC has requirements to determine the land use within the Town. However, when the Town has a plan that the planning council finds is in substantial conformity to the county, you can find the future land use element consistent, then the Town's future land use element prevails.

Mr. Keller said that a lot of the material is mandated and periodically the state requires that every seven years, you have to go through an in-depth evaluation process to determine if the plan still meets the intent of what it is suppose to do. That leads to the Evaluation and Appraisal Report (EAR). Mr. Keller said that the Town went through that process approximately five years ago which led to another series of amendments.

Mr. Keller said that the changes that were before the board were basically changes to be consistent with new mandates by the state and also to make changes in the future land use element based upon the certification requirements of the BCPC. So far as the changes that were done, the future land use has a lot of changes that were necessitated in order to be compliant with the BCPC certification requirements.

The second area of changes was that the state passed new requirements relative to greenhouse gas emissions and the governor executed certain mandates which went through the DCA. Then state law was changed and we needed to have amendments to the plan to deal with greenhouse gas emissions. So, four elements of the plan needed to be amended; the future land use element; the housing element; the conservation element; and the transportation element. In those elements, you would also see changes relative to the greenhouse gas emissions.

Mr. Keller said that another area of proposed changes deals with school concurrency. Recently, the state determined that the Town needed to have a public school facility element in the plan. So, the Town executed an Interlocal Agreement with the Broward County School Board. Therefore, there is a draft in the board's backup material of a proposed public school element that meets the requirements of the state and also Broward County. It is a county-wide element that the Town has to participate in.



Mr. Keller said that the next change was that the state changed the definition of the coastal high hazard area. Since the Town is a barrier island, the Town had to provide a definition within the plan of the coastal high hazard area. So, a map and a definition and a support document that shows that area were added to that document.

Mr. Keller said that the final area of changes deals with the transportation level of service. The plan that was done a couple of years ago was consistent with the county requirements for transportation levels. Since that time, the county and the state had to make some revisions, so our plan has been revised to be consistent with the most recent county and state changes.

Mr. Keller said that there were no changes in land use or density and that the changes that were implemented were changes that were mandated by the state or the planning council. Mr. Keller commented that this is a great deal of information for the board to take in and would understand if the board wished this item to return to the board next month.

Mr. Freeny referred to the Interlocal Agreement with regards to the school element and asked if this was the same issue that has been discussed at previous meetings or is this the framework to accommodate the agreement.

Mr. Keller responded that the Broward County School Board is in the process of revising what they call their level of service and as part of that, the school board has gone to the different cities that are participating in the Interlocal Agreement asking them to adopt revisions that affect the level of service. Mr. Keller said that he did not think that the Town approved that change. The document that the board is reviewing, reflects the level of service as it is right now and does not reflect the proposed changes. If the proposed changes were approved, there would be a need to make some changes in this document. The reason why the document does not reflect the change is that the data analysis for the changes and some objectives and policies would need to be revised. Mr. Keller said that language could be added to this document prior to adoption that would address that issue.

Chairman Oldaker asked if there was a deadline.

Mr. Keller said that there were requirements to enact the greenhouse gas emissions and if the changes were not implemented by a certain period of time, it would hold up certain amendments. However, there is no specific deadline that this would have to be done tonight.

Mr. Brandt asked Mr. Keller how these changes impact the Town's rules, regulations and ordinances if at all.

Mr. Keller used the greenhouse gas emission changes as an example and asked the board to refer to Policy Objective 1.10 on page 11. Mr. Keller said that the smart growth objective has been added to the plan based upon greenhouse gas emission requirements. Essentially, this talks about revising the Town's land development regulations to mandate or require that any new building within the community be more oriented to smart growth. Once, this is put into the document, the Town is required to modify the land development regulations within one year and have them put into effect. So, a new developer would have to make his drawings sensitive to the smart growth requirements.

Mr. Brandt said in reading through the material there were a lot of references to other out-side documents. Mr. Brandt was worried about enacting new policies that may impact the rules of the Town without knowing what impact they would have. Mr. Brandt said that it also sounded like most of these changes are mandated through some county or state process and it doesn't really matter what the board thinks.

Mr. Keller said that if someone comes in and develops in the community, transportation concurrency is something that the Town would have to comply with because in order for someone to get a building permit, they would have to be consistent with the transportation concurrency requirements and the process is already existing – a developer would have to go down to Broward County and basically pay a transit fee in order to pull their building permit. Mr. Keller said that the process was changed after the last version of the plan and this is clarification of the current process that is already being used.

Mr. Brandt said Mr. Keller knows this because he deals with this all of the time and said that there were a lot of things in the plan, such as this process that he was not familiar with, and unless the board reviews the document line by line, he was uncomfortable with going any further.

Mr. Keller said that as a policy maker, a line-by-line review is difficult; and to provide the references for backup would be equally difficult. Mr. Keller said that the Comprehensive Plan has been in effect since 1989.



Attorney Trevarthen interjected that everything that Mr. Keller has said is correct and she wanted to make sure the board understood that Broward County is unique. Attorney Trevarthen said that there is a charter in Broward County whereby the County Commission, by vote of the people in 1978, is given control over a county-wide land use plan and specifically the future land use element and the transportation element are part of that system. So, unlike the cities to the north like Palm Beach County or the cities to south in Dade County, in matters affecting the future land use element and matters affecting transportation, we have to do what the county says and that forms the minimum. There is sometimes room to do something additional or perhaps something more strict but that legal system has been in place since 1978. Attorney Trevarthen said what Mr. Keller is explaining, is that the changes to the concurrency system in this document were voted on and approved by the County Commission a year or more ago and the Town is out of compliance because we have not mirrored them in our comprehensive plan as required by county charter. Attorney Trevarthen said that the spirit of the question by Mr. Brandt was very understandable, and that is why Mr. Keller is suggesting that if there is any hesitation with the board, this matter could certainly roll over. Attorney Trevarthen said that the board really may not want to be inundated with the hundreds and hundreds of pages on how the concurrency system works and the details of the coastal high hazard system just because they are mandated pages of the original documents. Attorney Trevarthen suggested that the board request that staff make a more detailed presentation so that the board would understand how this process actually works.

Chairman Oldaker asked specifically what the board was suppose to do since this is all mandated.

Mr. Keller asked the board to consider this hearing like a workshop and continue this meeting to the next Planning and Zoning Hearing. Mr. Keller said that he was looking for direction regarding the greenhouse gas impacts and reducing our energy usage. Mr. Keller said that the historical trend shows that the sea level is rising and with the sea level rising, it could have a very drastic impact on a Town that is a barrier island. The Town by itself can't impact everything, however, many towns together can reduce the energy usage and contribute to reducing the greenhouse gases. So, the emphasis is to try and develop procedures and techniques that would reduce the amount of vehicular travel and let people travel in a mode that reduces gasoline usage either by using mass transit or using site design techniques or to encourage people to walk to downtown rather than driving to downtown.

Attorney Trevarthen also responded to Chairman Oldaker's comments and said that there was a range of answers. On the transportation and concurrency issue, the Town is pretty much stuck with exactly that language and for the most part, the Town needs to come into compliance with what the county language states. Attorney Trevarthen said that would not be true for everything that is in the plan and Mr. Keller has given the board a very good overview of the concepts of the greenhouse gas. Attorney Trevarthen said that there is a statute on point that is very minimum and does not have a lot of language and there is a rule that is pretty simple that gives some concepts. While the Town is mandated to deal with the greenhouse gas emissions issue, there has been left a certain amount of discretion to each city and county to decide how best to express these concepts in their own plan. Finally, with regard to the school changes, there was little room for the Town to make any changes because when this was first implemented, the Town was exempt and the Town was not at the table when the school concurrency issue was being put into effect.

Mr. Keller said that if the board felt they really needed additional documents over and above what is already provided, it would be very voluminous.

Mr. Brandt said that if there are things the board is unable to change, highlight them in color and for those things the board has latitude on, highlight them in a different color. Mr. Brandt said that he has reviewed this item page by page and on his notes, he wrote remove Section 11 because he knew that the Town did not feel very strongly about the ILA but now he is being told that the Town really does not have a choice.

Attorney Trevarthen responded that what Mr. Brandt was looking for might be for Staff to return to the Planning and Zoning Board with a bullet-point memo to differentiate what areas could be changed and possibly a power-point presentation to assist the board to better understand what they needed to do.

Mr. Brandt said that he could not vote on recommending a 130 page document without really understanding at least what it is going to do and what ramifications it would have on Town code.

Mr. Keller said that Mr. Brandt was not being asked to recommend a 130 page document. The board is being asked to approve the proposed changes because the document is already approved. These are changes to reflect the things that the Town has to address and that there is a little bit more flexibility with the greenhouse gas emissions issue.



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Mr. Brandt said that he understood what Mr. Keller was saying and commented that he has been very involved in House Bill 7135 that enacted the smart growth changes and is very familiar with the requirements and why they are in front of the board. However, there are a lot of changes he is not familiar with and agrees that there should be a multi-meeting process.

Mr. Hunsaker said that he did not know what the Town would gain by spending taxpayer's dollars to review a document that the experts were telling the board what "is" and what "is not" mandated. Mr. Hunsaker said that the bottom line is really not going to change much of what is in the community at all.

Mr. Brandt said that he did not know what the language does and would not know if it would change the community or not.

Mr. Hunsaker responded that the Town was fully developed and there would not be a lot of changes unless buildings were torn down on a lot by lot basis and new ones were built.

Mr. Keller said that he did not know what the impacts would be on the Town because he did not know the ramifications of the changes. Let's say for example, this document mandates that the Town revise some of the land development regulations and include the smart growth requirement. That would have some impact at some point.

Chairman Oldaker requested that Staff return with an abbreviated version of the plan because the document submitted is overwhelming and asked Mr. Brandt if he had any further questions.

Mr. Brandt agreed and said that he would provide Staff with his comments so that they could return with the information in question.

A motion was made by Eric Yankwitt, seconded by Yann Brandt, to continue the Amendments to the Towns' Comprehensive Plan to include revisions to address the Broward County Planning Council's Provisional Certification of the Future Land use Element and the new Public School Facility Element to the next Planning and Zoning meeting scheduled for July 21, 2010 with direction to Staff to bring a cover memo with the emphasis on where the board could make recommendations to change the document and for Staff to provide a timeline of where the process stands so the board would know what deadlines were involved related to these requirements. In a roll-call vote, all voted in favor. Motion passes 5 – 0.

### V. OLD BUSINESS

NONE

### VI. UPDATES/BOARD MEMBER COMMENTS

### VII. ADJOURNMENT

There being no further business to discuss, Chairman Oldaker adjourned the meeting at 9:00 P.M. June 16, 2010.

ATTEST:

Colleen Tyrrell, Board Secretary

\_\_\_\_\_  
Chairman Alfred Oldaker

Date Accepted: \_\_\_\_\_